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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/656,805 | 09/07/2000 | Richard Niccolai | 32955 | 1855 |

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EXAMINER

DABNEY, PHYLESHA LARVINIA

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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2643

DATE MAILED: 04/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/656,805

Applicant(s)

NICCOLAI, RICHARD

Examiner

Phylesha L Dabney

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 1-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to the election filed 24 November 2004, in which claims 18-37 are pending.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 18-27, 29-34, and 36-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Aebi et al (U.S. Patent No. 5,530,763).

Regarding claims 18, 29, 32-33, and 37, Aebi discloses a hearing aid comprising forming a first part of a first material; and injection molding the second part of a second material integrally with the first part, thereby assembling the first and second parts together (2 using PTFE material, col. 3 lines 26-31; 3-5 using “a suitable plastic” vinyl polysiloxane, col. 4 lines 7 through col. 5 line 26; and filler compound).

Regarding claim 19, Aebi discloses one of the parts is a portion of the housing (3, col. 4 line 66 through col. 5 line 5).

Regarding claims 20, Aebi discloses at least one of the parts is a seal (3 is the enclosing (seal) top portion of the hearing aid, col. 4 line 66 through col. 5 line 5).

Regarding claim 21, see the rejection of claims 19 and 20.

Regarding claim 22, Aebi discloses one of the first and second part is an acoustic conductor (4, 42).

Regarding claim 23, Aebi discloses one of the parts (4) is an acoustic conductor (42) situated at the output of an electromechanical transducer (41) of the hearing aid.

Regarding claim 24, Aebi discloses one of the parts (3) is an acoustic conductor (32) situated at the input of an electromechanical transducer (31) of the hearing aid.

Regarding claim 25, Aebi discloses a resilient bush configured to seat (2) a transducer.

Regarding claims 26-27, Aebi discloses injection molding a third part (2 using PTFE material, col. 3 lines 26-31; 3-5 using "a suitable plastic" vinyl polysiloxane, col. 4 lines 7 through col. 5 line 26; and filler compound) integrally with the first and second parts, thereby assembling the first, second and third parts together, and further comprising a housing, seating bush and an acoustical conductor as depicted in Figure 1.

Regarding claims 30 and 36, Aebi discloses the first and second parts are first and second materials formed by simultaneous injection molding (3-5 using "a suitable plastic" vinyl polysiloxane, col. 4 lines 7 through col. 5 line 26; and filler compound).

Regarding claim 31, Aebi discloses a rim portion of a feed-through aperture (34) of the housing (3-5).

Regarding claim 34, Aebi discloses mounting a unit (6, 33) of the hearing aid device into an opening of a bordering area, the bordering area being formed by the first and second parts.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 28 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aebi.

Regarding claim 28, Aebi does not teach having first, second, and third parts formed by simultaneous injection molding. However, the examiner takes official notice that it is known to formulate a device, such as a hearing device, utilizing simultaneous injection molding of parts for beneficially reducing processing steps and production costs. Therefore, it would have been obvious to one of ordinary skill in the art to formulate the three parts of the hearing device of Aebi using multi-part injection molding technology for reducing processing steps and production costs.

Regarding claim 35, Aebi does not specifically teach the unit (6, 33) is a manually operable control element. However, the examiner takes official notice that it is known to include manually operable control elements, such as a rotary control means, etc., on the hearing aid for beneficially allowing the adjustment of the volume. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include manual control means in the invention of Aebi for allowing the adjustment of volume, hearing environment selection, and/or etcetera.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phylesha L Dabney whose telephone number is 703-306-5415. The examiner can normally be reached on Mondays, Tuesdays, Wednesdays, Fridays 8:30-5 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on 703-305-4708. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PLD



April 4, 2004



CURTIS KUNTZ
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